

FEB 10 2005

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BEFORE THE FEDERAL ELECTION COMMISSION

2005 FEB 10 A 11: 33

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**SENSITIVE**

In the Matter of

James M. Rhodes, et al.

GENERAL COUNSEL'S REPORT #3

**I. ACTIONS RECOMMENDED**

Find reason to believe Bravo, Inc. d/b/a Rhodes Framing ("Bravo") and Rhodes Ranch General Partnership ("Rhodes Ranch") knowingly and willfully violated the Federal Election Campaign Act of 1971, as amended (the "Act");

find reason to believe Dario Herrera and Herrera for Congress and Michael W. Kern, in his official capacity as treasurer ("Herrera Committee") knowingly and willfully violated the Act

**II. BACKGROUND**

The Commission previously found reason to believe ("RTB") James M. Rhodes violated 2 U.S.C. §§ 441f, 441b(a), and 441a(a)(1)(A) by making contributions to Herrera for Congress and Friends for Harry Reid (the "Reid Committee") in the names of his employees and their spouses. The Commission further found reason to believe that Rhodes Design and Development Corporation ("RDDC") violated 2 U.S.C. §§ 441f and 441b(a) by making corporate contributions in connection with a federal election, and that various employees and

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1 their spouses violated 2 U.S.C. § 441f by permitting their names to be used to effect  
2 contributions in the name of another.

3 While the complaint presented a suspicious pattern of contributions, it was not based  
4 on personal knowledge and lacked any direct evidence that the contributions were reimbursed.  
5 As such, the Commission made non-knowing and willful RTB findings as to James M.  
6 Rhodes and RDDC and authorized an investigation to determine whether the contributions  
7 were reimbursed, the identity of the source of the funds, and whether the conduct was  
8 knowing and willful.

9 **III. KNOWING AND WILLFUL CONDUCT**

10 James M. Rhodes and RDDC have admitted that the conduit contributors were  
11 reimbursed for their contributions to the Herrera and Reid Committees.  
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14 Actions that are "knowing and willful" are those that were "taken with full knowledge  
15 of all of the facts and a recognition that the action is prohibited by law." 122 Cong. Rec.  
16 H3778 (daily ed. May 3, 1976); accord *FEC v. John A. Dramesi for Congress Committee*,  
17 640 F. Supp. 985 (D.N.J. 1986) (knowing and willful standard requires knowledge that one is  
18 violating the law). An inference of a knowing and willful act may be drawn "from the  
19 defendant's elaborate scheme for disguising" his or her actions. *United States v. Hopkins*, 916  
20 F.2d 207, 214-15 (5th Cir. 1990).

21 It appears that Rhodes acted with full recognition that the reimbursement scheme here  
22 was illegal. Rhodes was a knowledgeable contributor, having contributed \$30,000 between  
23 1997 and 2002 to various candidate and other committees. See FEC Disclosure Database.

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1 Beyond his general familiarity with campaign contributions, Rhodes had specific knowledge  
2 of the Act's contribution limits. In October 1998, Rhodes made a \$2,000 contribution to the  
3 Jim Hansen Committee ("Hansen Committee"). The Hansen Committee subsequently  
4 refunded the \$1,000 excessive portion of Rhodes' contribution. *Id.* Thus, prior to  
5 orchestrating a scheme to give \$27,000 to the Herrera Committee and \$10,000 to the Reid  
6 Committee, Rhodes was fully aware that he could not give more than \$1,000 per election to a  
7 candidate's campaign.

8 To carry out the reimbursement scheme in this matter, Rhodes asked RDDC  
9 employees Nadine Giudicessi (RDDC's Corporate Controller) and James A. Bevan (RDDC's  
10 Chief Financial Officer) to solicit other employees to make contributions to the Herrera and  
11 Reid Committees. Giudicessi and Bevan complied with Rhodes' request, soliciting and  
12 collecting contribution checks from their fellow employees, and writing their own checks.  
13 Prior to making their contributions, each employee was promised that he or she would be  
14 reimbursed. Rhodes apparently explained the contribution limits to Giudicessi, who asked  
15 one employee, Margaret Hester, to write a contribution check in her husband's name  
16 explaining that Federal law only allowed a total of \$2,000 in contributions per election cycle.<sup>1</sup>  
17 The reimbursed contributions were transmitted to the Herrera and Reid committees  
18 differently; while Giudicessi sent the contributions to the Reid Committee's offices, Dario  
19 Herrera picked up at least some of the contributions in person.

20 To reimburse the contributions, Rhodes had five checks drawn from three entities in  
21 which he has either an ownership or partnership interest: RDDC, Bravo, and Rhodes Ranch.  
22 The five reimbursement checks were written as follows:

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<sup>1</sup> Ms. Hester agreed, submitting a \$1,000 contribution check to the Herrera Committee in her husband's name. Ms. Giudicessi also submitted a \$2,000 from her husband, Gary Giudicessi, to the Herrera Committee

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DATE	AMOUNT	PAYOR	PAYEE
4/9/01	\$5,000 00	RDDC	Cash
6/28/01	\$8,000 00	Bravo, Inc	Petty Cash
6/29/01	\$7,000.00	RDDC	Petty Cash
6/29/01	\$10,000 00	Rhodes Ranch	Cash
3/27/02	\$10,000 00	Rhodes Ranch	Rhodes Ranch

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2 See Attachment 1.<sup>2</sup> Petty cash accounts at the Rhodes entities routinely held only \$500, and  
3 petty cash transactions were typically less than \$50. Rhodes asked Giudicessi and Bevan to  
4 reimburse the contributions with the proceeds of these checks. Many of the conduit  
5 contributors were reimbursed for their contributions on the same day they were made.

6 As further evidence that the conduct here was knowing and willful, Rhodes also  
7 engaged in an "elaborate scheme" to disguise the reimbursement transactions in corporate  
8 accounting records. *Hopkins*, 916 F.2d at 214-15. Corporate ledger reports refer to the  
9 reimbursement checks in various ways: one reimbursement check for \$5,000 was accounted  
10 for in the general ledger as "cash for travel"; one was described as "reimburse," a common  
11 entry for reimbursed business expenses; two were attributed to "petty cash"; and one was  
12 described only as "\*." Mona Wilcox, the former Controller at Bravo, stated that she was told  
13 to "expense" the reimbursement checks to various ongoing construction jobs.

14 Moreover, it appears that Rhodes also disguised the transactions in corporate and  
15 personal tax returns, treating the funds as deductible business expenses by the various  
16 corporate and partnership entities in question. An initial version of RDDC's and Bravo's  
17 combined Form 1120 (the tax returns for these entities were filed under the name "Sagebrush  
18 Enterprises") characterizes \$12,000 of the reimbursed funds as deductible business expenses  
19 despite the fact that political contributions are not deductible under section 162 of the Internal  
20 Revenue Code. See *Cloud v. Commr.*, 97 T.C. 613, 626-628 (1991). When independent

<sup>2</sup> It is unclear why the reimbursement checks total \$40,000 while the amount contributed to the Herrera and Reid Committees was \$37,000. For purposes of this report and the attached Factual and Legal Analyses we include only the \$37,000 contributed to the Herrera and Reid committees.

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1 auditors found that these funds were actually used for political contributions, they informed  
2 Rhodes that he would have to amend his tax returns. Rhodes subsequently filed amended  
3 returns for himself and the entities, treating at least some of the previously deducted funds as  
4 disbursements to himself though the funds had actually been paid to the reimbursed  
5 employees.

6 **IV. RECOMMENDATIONS AND CONCILIATION**

7 **A. Bravo and Rhodes Ranch**

8 Of the three entities used to provide reimbursement funds, two are not yet respondents.  
9 *See Attachment 1.* Thus, we recommend the Commission find reason to believe that Bravo  
10 knowingly and willfully violated 2 U.S.C. §§ 441f and 441b(a) by making corporate  
11 contributions to the Herrera and Reid Committees in the names of others, and that Rhodes  
12 Ranch knowingly and willfully violated 2 U.S.C. §§ 441a(a)(1)(A) and 441f by making  
13 excessive contributions to the Herrera and Reid Committees in the names of others.

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**B. Dario Herrera and Herrera for Congress**

In our First General Counsel's Report, we recommended that the Commission take no action with respect to Dario Herrera or Herrera for Congress, but stated that if we discovered information suggesting that these respondents were liable for any violation, we would "recommend appropriate action." First General Counsel's Report at 6. Based on our investigation to date, we believe that Dario Herrera and the Herrera Committee knowingly and willfully violated the Act by receiving contributions in the name of another from the reimbursed Rhodes contributors.

During the investigation, we learned that Herrera appeared in person at RDDC's offices to collect some of the reimbursed contributions. According to RDDC Controller Nadine Giudicessi, Herrera came to the office after receiving a call informing him that the checks were available. Upon arriving, he spoke with Giudicessi and waited as she collected checks from employees who had not yet turned them in.<sup>3</sup> Giudicessi stated that Herrera was in the office for about an hour.

<sup>3</sup> In an interview, Giudicessi claimed that she could not remember what she and Herrera had spoken about when he visited her office, but did recall leaving the office to get a check from at least one other employee who had not yet "turned it in."

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Our analysis of Herrera's involvement is consistent with both the facts and counsel's representation that Herrera had information about the reimbursement scheme. In his capacity as a Clark County Commissioner, Herrera frequently came into contact with Rhodes and his various businesses. In 2001 and 2002, when the contributions in question were made, "Rhodes had 22 items before the county commission . . . All the items passed unanimously, although county staff had recommended denial in five cases." Jane Ann Morrison, *Political Notebook*, Las Vegas Review-Journal, July 14, 2003. Thus, Herrera was exceedingly familiar with Rhodes, his employees, and his businesses. Given this familiarity, it is unlikely that Herrera would believe that Rhodes' employees and spouses – including a payroll clerk, human resources manager, painter, and casino security worker – had the wherewithal to contribute \$1,000 and sometimes \$2,000 to his congressional campaign committee. Indeed, a number of the employee contributors did not have sufficient funds to cover their contribution checks and required immediate reimbursement.

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1 In light of Herrera's apparent involvement in the reimbursement scheme at issue here,  
2 and the lack of any information rebutting the inferences drawn from the circumstances here,  
3 we recommend the Commission find reason to believe Dario Herrera and his committee  
4 knowingly and willfully violated 2 U.S.C. § 441f by knowingly receiving contributions in the  
5 name of another. Additionally, because the funds were drawn in part from corporate  
6 accounts, we recommend the Commission find reason to believe Herrera and the Herrera  
7 Committee knowingly and willfully violated 2 U.S.C. § 441b(a) by knowingly receiving  
8 corporate contributions, and 2 U.S.C. § 441a(f) for knowingly receiving excessive  
9 contributions. Lastly, we recommend the Commission find reason to believe the Herrera  
10 Committee knowingly and willfully violated 2 U.S.C. § 434(b) by improperly reporting the  
11 reimbursed contributions as contributions from the conduit contributors.

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17 **C. Nadine Giudicessi and James A. Bevan**

18 In our First General Counsel's Report, we recommended non-knowing and willful  
19 RTB findings with respect to the reimbursed contributors, but stated that we intended to  
20 recommend in a future report that the Commission take no further action with respect to these  
21 respondents unless any had "assumed a more active role in the alleged reimbursement  
22 scheme." First General Counsel's Report at 6. For this reason, we did not seek conciliation  
23 authority with the reimbursed contributors.

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Though we believe Rhodes conceived of the reimbursement scheme without assistance from his employees, it appears that Giudicessi and Bevan carried out the logistics of the scheme.

**V. RECOMMENDATIONS**

1. Find reason to believe Bravo, Inc. d/b/a Rhodes Framing knowingly and willfully violated 2 U.S.C. §§ 441f and 441b(a).
2. Find reason to believe Rhodes Ranch General Partnership knowingly and willfully violated 2 U.S.C. §§ 441f and 441a(a)(1)(A).
- 3.
4. Find reason to believe Dario Herrera knowingly and willfully violated 2 U.S.C. §§ 441f, 441b(a), and 441a(f).

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5. Find reason to believe Herrera for Congress and Michael W. Kern, in his official capacity as treasurer, knowingly and willfully violated 2 U.S.C. §§ 441f, 441b(a), 441a(f), and 434(b).

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8. Approve the attached Factual and Legal Analyses.

9. Approve the appropriate letters.

Lawrence H. Norton  
General Counsel

2/9/05  
Date

BY:

Rhonda J. Vostding  
Rhonda J. Vostding  
Associate General Counsel

Jonathan A. Bernstein  
Jonathan A. Bernstein  
Assistant General Counsel

Jesse B. Christensen  
Jesse B. Christensen  
Attorney

Attachments:

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